

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.3 Audiotaped Evidence

B. Hearsay Objections to Audiotaped Evidence

2. Excited Utterance Exception Under MRE 803(2)

In *People v Walker (Walker II)*, ___ Mich App ___, ___ (2006), the Michigan Court of Appeals, on remand from the Michigan Supreme Court, reversed its prior holding in *People v Walker (Walker I)*, 265 Mich App 530 (2005), on the ground that the written statements of the victim and her neighbor constituted “testimonial statements” for purposes of the Confrontation Clause.

Accordingly, delete the April 2005 update to page 168 and replace it with the following case summary:

In *People v Walker (Walker I)*, 265 Mich App 530, 532 (2005), the defendant beat his live-in girlfriend with a stick and threatened to “blow her back out” with a handgun. Two hours after the beatings had stopped, the victim jumped from a second-story balcony, ran to a neighbor’s house, and asked the neighbor to call the police. The victim made statements to the neighbor, who wrote out the statements and gave them to the police. The victim also made a written statement to the police. *People v Walker (Walker II)*, ___ Mich App ___, ___ (2006). The victim did not appear for trial, and her statements were admitted under the excited utterance exception to the hearsay rule. On appeal, the defendant argued that the statements should not have been admitted because of the two-hour delay between the assault and the victim’s escape, during which time the victim fell asleep and had time to “compose herself enough to jump from a second story window.” *Walker I, supra* at 533. The defendant also argued that this delay provided the victim with time to fabricate the assault. The Court of Appeals rejected the defendant’s argument and upheld the admission of the statements as “excited utterances.” *Id.* at 534–535. The Court of Appeals reiterated the Michigan Supreme Court’s holding

in *People v Smith*, 456 Mich 543, 551 (1998), that there is no express time limit for excited utterances: the focus is on whether the declarant was still under the stress of the event at the time the statement was made. The Court found that the facts of this case, including the testimony of the neighbor and police officer that the victim was upset, crying, shaking, and hysterical, supported the trial court's determination that the statements were properly admitted. *Walker I, supra* at 534–535.

The Court of Appeals also found that the crime victim's statements made to the neighbor and police officer did not constitute "testimonial statements" for the purposes of the Confrontation Clause. *Walker I, supra* at 535. Subsequently, however, the Michigan Supreme Court vacated the holding of the Court of Appeals in *Walker I* as to the Confrontation Clause issue, and remanded the case to the Court of Appeals for reconsideration in light of the newly decided case of *Davis v Washington*, 547 US ___, ___ (2006). *People v Walker*, 477 Mich 856, 856 (2006). On remand, the Court of Appeals found that the statements made during the 911 call were not testimonial in nature because they were made for the purpose of resolving an existing emergency. However, the Court found that both the neighbor's written statement to the police and the victim's own statement to the police constituted "testimonial statements" for purposes of the Confrontation Clause. On this basis the Court of Appeals reversed its prior holding in *Walker I*, and remanded the case to the trial court for further proceedings as appropriate.